

**PART 145—COOPERATION WITH
THE OFFICE OF SPECIAL COUN-
SEL OF THE MERIT SYSTEMS PRO-
TECTION BOARD**

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**APPENDIX TO PART 145—LEGAL REPRESENTA-
TION**

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 133.

SOURCE: 51 FR 17178, May 9, 1986, unless otherwise noted.

§ 145.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for cooperation with the Office of Special Counsel (OSC) of the Merit Systems Protection Board (MSPB) in fulfilling the responsibilities of the Special Counsel under Pub. L. 95-454 and 5 CFR 1201 and 1250 to conduct investigations of alleged prohibited personnel practices and to ensure the investigation of other allegations of improper or illegal conduct referred to the Department of Defense by the OSC. This part provides internal guidance to DoD officials, and does not establish an independent basis for any person or organization to assert a right, benefit, or privilege.

§ 145.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Joint Chiefs of Staff (OJCS), the Inspector General, Department of Defense (IG, DoD) and the Defense Agencies (hereafter referred to collectively "as DoD Components").

(b) The provisions of this part that relate to prohibited personnel practices do not apply to the Defense Intelligence Agency (DIA) or the National Security Agency (NSA), as prescribed by 5 U.S.C. 2302(a)(2)(C)(ii.).

(c) This part does not restrict the IG, DoD, in coordinating investigative efforts on individual cases with the OSC where concurrent jurisdiction exists.

§ 145.3 Definitions.

Improper or illegal conduct. (a) A violation of any law, rule, or regulation in connection with Government misconduct; or

(b) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Office of the Secretary of Defense (OSD). (a) The immediate offices of the Secretary, the Deputy Secretary, the Assistant Secretaries, Assistants to the Secretary, and other officials serving the Secretary of Defense directly.

(b) The field activities of the Secretary of Defense.

(c) The Organization of the Joint Chiefs of Staff.

(d) The Unified and Specified Commands.

Personnel action. (a) An appointment.

(b) A promotion.

(c) An adverse action under 5 U.S.C. 7501 *et seq.* or other disciplinary or corrective action.

(d) A detail, transfer, or reassignment.

(e) A reinstatement.

(f) A restoration.

(g) A reemployment.

(h) A performance evaluation under 5 U.S.C. 4301 *et seq.*

(i) A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action.

(j) Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

Prohibited personnel practice. Action taken by an employee who has authority to take, direct others to take, recommend, or approve any personnel action:

(a) That discriminates for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited by certain specified laws (see 5 U.S.C. 2302(b)(1)).

(b) To solicit or consider any recommendation or statement, oral or